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CBO MEMORANDUM

TRENDS IN FEDERAL SPENDING FOR
THE ADMINISTRATION OF JUSTICE

August 1996

**CONGRESSIONAL BUDGET OFFICE
SECOND AND D STREETS, S.W.
WASHINGTON, D.C. 20515**



AOJ-02-06-0967

NOTES

Unless part of the name of an act, all years referred to in this memorandum are fiscal years.

Numbers in the text and tables may not add to totals because of rounding.

This Congressional Budget Office (CBO) memorandum responds to a letter of request from the Chairman of the Senate Budget Committee for an analysis of federal funding for the administration of justice in the wake of the Violent Crime Control and Law Enforcement Act of 1994.

Ellen Hays and Philip Joyce of CBO's Special Studies Division prepared the memorandum under the direction of Robert W. Hartman and with the assistance of Alexandra Campbell and Steven Celio. The authors gratefully acknowledge the comments of Mark Grabowicz of CBO's Budget Analysis Division, Mark Musell of the Special Studies Division, Brian Benczkowski of the Senate Budget Committee, and David Teasley of the Congressional Research Service. Hugh Connelly of the Office of Management and Budget and numerous analysts from OMB and agency budget offices provided valuable information.

Sherwood Kohn edited the memorandum, and Christian Spoor provided editorial assistance. L. Rae Roy and Marlies Dunson prepared the report for final publication, with help from David Rafferty and Kathryn Quattrone.

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Spending for the administration of justice has been increasing at all levels of government. The Violent Crime Control and Law Enforcement Act of 1994 highlighted once again the concerns that the people and their elected officials have about public safety. But that effort was merely the continuation of a trend that has seen spending for the administration of justice at all levels of government increase substantially over the past three decades.

This memorandum by the Congressional Budget Office (CBO) reviews the trends in such spending at the federal level over the past 30 years, discusses changes in these trends in the wake of the 1994 Crime Control Act, reviews the final results of the 1996 appropriation process as they have affected spending on the administration of justice, and briefly summarizes the President's 1997 budget request for justice programs.

TRENDS IN FEDERAL SPENDING ON JUSTICE

Most government spending on justice is not federal. In 1992 (the most recent year for which information is available from the Bureau of Justice Statistics), state and local government spending on justice totaled just over \$80.2 billion, compared with less than \$17.5 billion of federal spending on justice (see Table 1). Both types of

TABLE 1. JUSTICE SYSTEM SPENDING BY ACTIVITY AND
LEVEL OF GOVERNMENT, 1992 (In billions of dollars)

Activity	Federal	State and Local	Total
Police	7.4	34.6	42.0
Judicial and Legal	7.4	16.6	24.0
Corrections	<u>2.6</u>	<u>29.1</u>	<u>31.7</u>
Total	17.4	80.2	93.8 ^a

SOURCE: Department of Justice, Bureau of Justice Statistics, *Sourcebook of Criminal Justice Statistics: 1994* (1995).

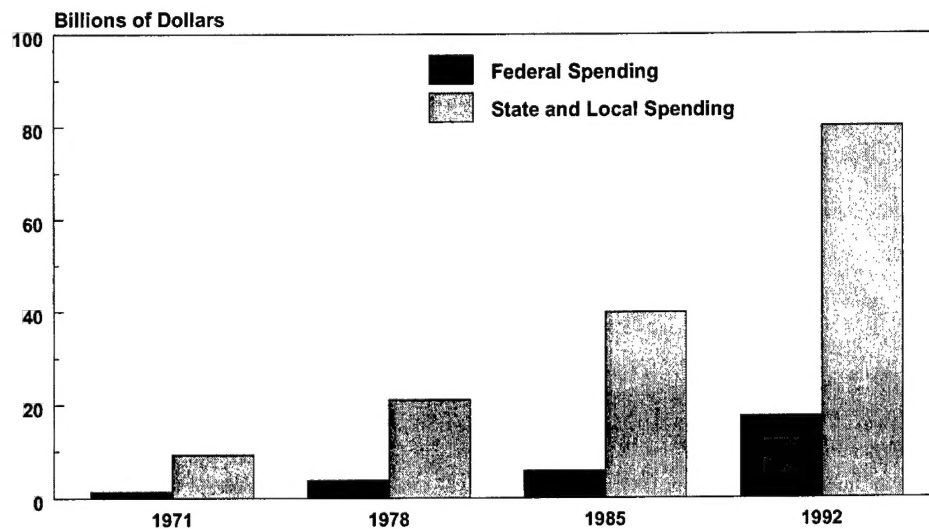
a. Excludes intragovernmental expenditures, which consist of payments from federal to state or local government and will eventually show up as expenditures of state or local government.

spending have increased steadily, however; federal spending on justice grew about twelve-fold between 1971 and 1992 (see Figure 1).

Although spending on the administration of justice constitutes only a small portion of the total federal budget, its share of federal spending has increased between 1962 and 1995 (see Table 2).¹ In general, the shift from discretionary to mandatory spending in the federal budget is striking. Discretionary spending--which funds programs through the annual appropriation process--made up 67.5 percent of the federal budget in 1962. By 1995, it had declined to 35.9 percent. Mandatory (or direct) spending, which is driven by requirements included in underlying law, increased from 26.1 percent to 48.8 percent during the same period.

1. These years were chosen because they represent the period covered by the Office of Management and Budget's historical tables that accompany the fiscal year 1997 budget.

FIGURE 1. STATE AND LOCAL SPENDING FOR THE ADMINISTRATION
OF JUSTICE COMPARED WITH FEDERAL SPENDING
(By fiscal year, in billions of dollars)



SOURCE: Department of Justice, Bureau of Justice Statistics, *Sourcebook of Criminal Justice Statistics: 1994* (1995).

TABLE 2. COMPONENTS OF FEDERAL SPENDING, SELECTED FISCAL YEARS, 1962-1995
(As a percentage of total federal spending)

Budget Function Classification	1962	1970	1978	1987	1995
Discretionary Spending					
National Defense	49.3	41.8	22.8	28.1	18.0
International Affairs	5.1	2.0	1.9	1.5	1.3
Domestic					
General science, space, and technology	1.6	2.3	1.1	0.9	1.1
Energy	0.7	0.5	1.2	0.5	0.4
Natural resources and environment	2.2	1.8	2.6	1.5	1.4
Agriculture	0.4	0.4	0.3	0.2	0.3
Commerce and housing credit	1.2	1.1	0.7	0.2	0.2
Transportation	1.3	1.3	3.2	2.4	2.4
Community and regional development	0.4	1.2	2.4	0.5	0.7
Education, training, employment, and social services	0.8	3.7	4.8	2.3	2.5
Health	1.0	1.6	1.6	1.1	1.4
Medicare	0	0.2	0.2	0.2	0.2
Income security	0.5	0.5	1.4	1.9	2.6
Social Security	0.3	0.3	0.3	0.2	0.2
Veterans benefits and services	1.2	1.1	1.3	1.1	1.2
Administration of justice	0.4	0.4	0.8	0.7	1.1
General government	<u>1.2</u>	<u>1.2</u>	<u>1.0</u>	<u>0.7</u>	<u>0.8</u>
Subtotal	13.1	17.5	23.0	14.6	16.6
Total	67.5	61.4	47.6	44.2	35.9
Mandatory Spending					
Mandatory Programs					
Medicaid	0.1	1.4	2.3	2.7	5.9
Medicare	0	3.0	4.8	7.3	10.3
Income security	8.1	7.5	12.0	10.4	11.9
Social Security	13.1	15.1	20.1	20.4	21.9
Other	<u>4.8</u>	<u>4.2</u>	<u>5.4</u>	<u>1.1</u>	<u>-1.3</u>
Subtotal	26.1	31.2	44.6	42.0	48.8
Net Interest	<u>6.5</u>	<u>7.4</u>	<u>7.7</u>	<u>13.8</u>	<u>15.3</u>
Total	32.5	38.6	52.4	55.8	64.1
All Federal Spending					
Total Spending	100.0	100.0	100.0	100.0	100.0

SOURCE: Office of Management and Budget, *Budget of the United States Government*, Historical Tables.

The administration of justice, however, was one of the few areas of discretionary spending that actually increased slightly as a share of total federal spending. It rose from 0.4 percent of the budget in 1962 to 1.1 percent in 1995, putting it roughly on a par with spending for international affairs, science and space, and veterans' benefits and services.

CATEGORIES OF FEDERAL SPENDING ON JUSTICE

Federal spending on justice has grown more rapidly in some areas than others. Justice spending can be broken down by using the functional classification system, which is a way of grouping budgetary resources so that federal spending can be seen in the context of national needs. The Congress uses that system in preparing its annual budget resolution, which forms the framework for the Congressional budget.

The functional classification system groups national needs into 17 broad areas that, inasmuch as possible, are grouped without regard to agency or organizational distinctions. Each federal activity is placed in a functional category that best defines its most important purpose, even though many activities of the federal government serve more than one purpose.

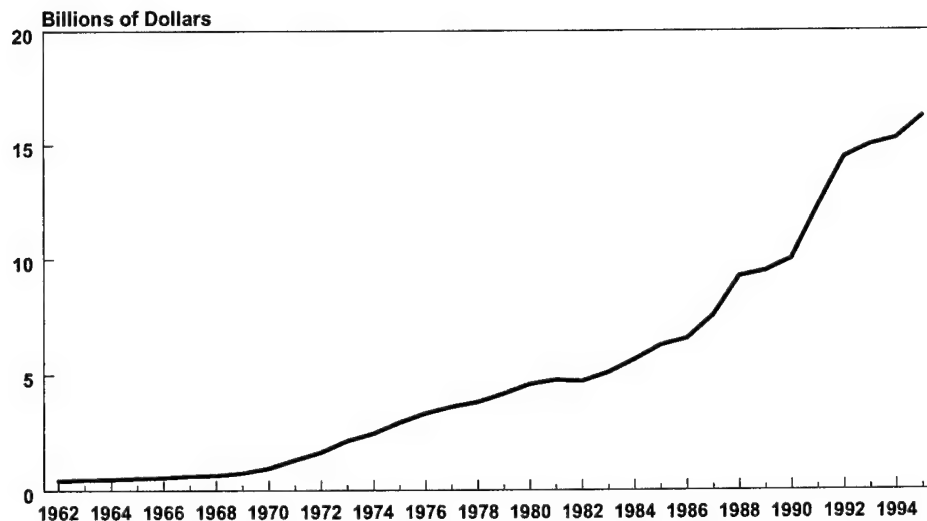
Administration of justice, which is function 750 in this classification scheme, is composed of federal programs that provide for judicial services, police protection,

law enforcement (including civil rights), rehabilitation and incarceration of criminals, and the general maintenance of domestic order (see Figures 2 and 3).

In 1995, the Department of Justice accounted for almost \$11 billion, or about two-thirds, of the \$16.2 billion in total spending for function 750. That amount includes the activities of the Federal Bureau of Investigation, the Drug Enforcement Administration, the Federal Bureau of Prisons, and the Immigration and Naturalization Service. In 1995, spending for those four agencies together amounted to more than 60 percent of the total budget for the Department of Justice. The U.S. Attorneys' Offices are another significant source of spending within the Justice Department budget. Treasury Department activities included in the justice function consist almost exclusively of the spending of three federal agencies--the Secret Service, the Bureau of Alcohol, Tobacco, and Firearms, and the United States Customs Service.

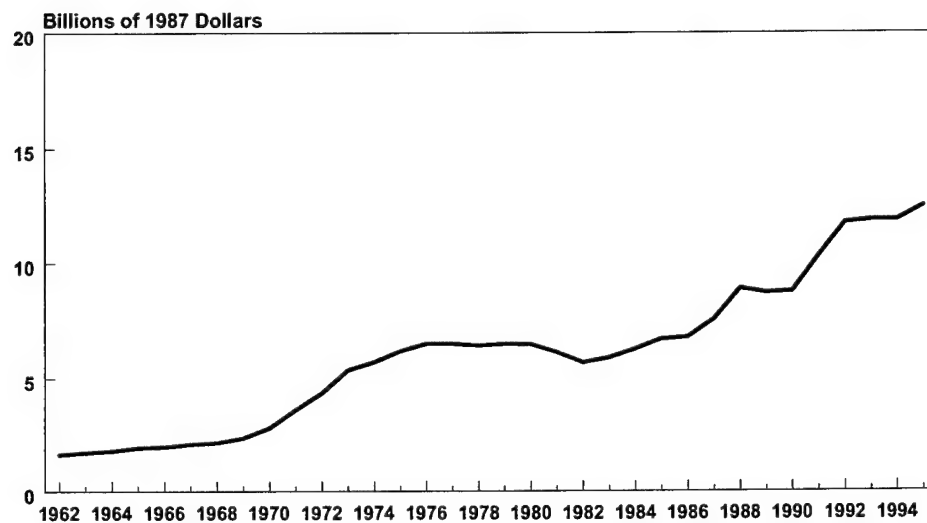
The justice function is divided into four subfunctions. The spending histories of those subfunctions indicate that expenditures in three of the four--law enforcement (subfunction 751), litigative and judicial (subfunction 752), and corrections (subfunction 753)--have increased slowly but consistently in real terms since 1962 (see Table 3). Outlays for litigation, courts, and corrections have grown the most (representing 10-fold increases between 1962 and 1995), followed by law enforcement (a five-fold increase).

FIGURE 2. ADMINISTRATION OF JUSTICE SPENDING IN NOMINAL DOLLARS,
FISCAL YEARS 1962-1995



SOURCE: Office of Management and Budget, *Budget of the United States Government*, Historical Tables.

FIGURE 3. ADMINISTRATION OF JUSTICE SPENDING ADJUSTED FOR INFLATION,
FISCAL YEARS 1962-1995



SOURCE: Office of Management and Budget, *Budget of the United States Government*, Historical Tables.

TABLE 3. JUSTICE SPENDING BY AGENCY AND SUBFUNCTION, SELECTED FISCAL YEARS, 1962-1995 (In millions of dollars)

Agency	1962	1970	1978	1987	1995
Subfunction 751: Federal Law Enforcement Activities					
Federal Bureau of Investigation	126	253	552	1,183	1,969
Drug Enforcement Administration	4	26	178	412	788
Immigration and Naturalization Service	63	104	275	689	1,806
Bureau of Alcohol, Tobacco, and Firearms	0	0	128	179	372
Customs Service	63	122	394	942	1,643
Secret Service	7	30	129	312	528
Other	<u>5</u>	<u>35</u>	<u>178</u>	<u>393</u>	<u>-722</u>
Subtotal	269	570	1,834	4,110	6,384
Subfunction 752: Federal Litigative and Judicial Activities					
Judiciary	57	132	435	1,173	2,893
U.S. Attorneys	46	89	184	336	879
U.S. Marshals	0	0	0	156	396
Other Justice Department Legal Activities	6	18	156	484	1,482
Legal Services Corporation	0	0	157	309	429
Other	<u>2</u>	<u>6</u>	<u>10</u>	<u>23</u>	<u>44</u>
Subtotal	111	245	943	2,482	6,123
Subfunction 753: Federal Correctional Activities					
Bureau of Prisons					
Operations	47	76	263	613	2,233
Construction	6	4	46	98	560
Other	<u>-4</u>	<u>-2</u>	<u>-2</u>	<u>0</u>	<u>-44</u>
Subtotal	49	79	307	711	2,749
Subfunction 754: Criminal Justice Assistance					
Justice Assistance to State and					
Local Government	0	65	729	250	648
Community-Oriented Policing Services	0	0	0	0	245
Other VCRTF Justice Assistance	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>74</u>
Subtotal	0	65	729	250	967
Function 750					
Total	429	959	3,813	7,553	16,223

SOURCE: Office of Management and Budget historical database.

NOTE: VCRTF = Violent Crime Reduction Trust Fund.

However, spending by the fourth category--criminal justice assistance to state and local governments (subfunction 754)--has fluctuated widely from year to year. The 1970s were years of tremendous growth for justice assistance in the wake of the Omnibus Crime Control and Safe Streets Act of 1968, which set up the Law Enforcement Assistance Administration (LEAA) as part of the Justice Department. As the LEAA expired, aid to state and local governments dropped in the late 1970s and early 1980s, but rose again in the late 1980s and early 1990s.

THE VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994

The mid-1990s are witnessing a rapid acceleration in spending for justice assistance as a result of the passage of the Violent Crime Control and Law Enforcement Act of 1994. In response to the widespread perception of a national problem with violent crime, the legislation was enacted in the last days of August 1994. The law represented a watershed in funding for the administration of justice, channeling billions of dollars of new support into criminal justice assistance programs, as well as augmenting federal efforts in law enforcement, litigation, courts, and corrections.

The 1994 Crime Control Act reflected renewed support for the concept of direct federal aid for criminal justice assistance--a concept first embodied in the creation of the Law Enforcement Assistance Administration in the Omnibus Crime Control

and Safe Streets Act of 1968. Before the days of the LEAA, states and localities had most of the responsibility for the prevention and control of crime and the maintenance of order.

The 1994 Crime Control Act was the fifth omnibus crime legislation of the past decade. After the 1968 act, the Congress enacted the Crime Control Act of 1984, the Anti-Drug Abuse Act of 1986, the Anti-Drug Abuse Act of 1988, and the Crime Control Act of 1990. Each of those laws expanded the federal role in fighting violent crime and drug abuse, thus (both directly and indirectly) exerting upward pressure on funding and employment for many of the programs already in function 750, as well as creating new programs within it.

The 1994 act consisted of 33 titles. Among other things, the law increased the number of crimes punishable by the death penalty, required life imprisonment for three-time federal offenders, banned certain types of semiautomatic assault weapons, increased penalties for terrorists and repeat sex offenders, and made possible the prosecution as adults of juvenile offenders who commit federal crimes involving violence or firearms.

The law also authorized almost \$35 billion worth of federal spending on a mix of new and existing law enforcement and crime prevention programs. As a mechanism for funding those programs, the law established the Violent Crime

Reduction Trust Fund (VCRTF), into which were to be deposited annual savings realized from eliminating over 272,900 federal jobs as required by the Federal Workforce Restructuring Act. The dollar amounts of the projected workforce-reduction savings for each year were made explicit in the Crime Act and totaled \$30.2 billion over the 1995-2000 period.

Under the Crime Act, the following amounts are to be transferred from the general fund to the VCRTF at the beginning of each fiscal year: \$2.423 billion in 1995, \$4.287 billion in 1996, \$5.0 billion in 1997, \$5.5 billion in 1998, and \$6.5 billion in each of 1999 and 2000, for a total of \$30.2 billion. VCRTF funding can be used only to fund the \$35 billion worth of programs explicitly authorized in the Crime Act--or any subsequent legislation authorizing VCRTF spending, such as the recent Antiterrorism and Effective Death Penalty Act of 1996.

To make sure that the Crime Act would not increase the deficit (that is, that the funds earmarked for spending from the VCRTF really would be equal to or less than the savings realized from reducing federal employment), the Congress lowered the existing 1995-1998 budget authority and outlay caps on overall discretionary spending, as well as creating (in effect) a separate cap on VCRTF spending. Under the Budget Enforcement Act, any VCRTF spending in any fiscal year in excess of the workforce savings amounts would force reductions in VCRTF spending to meet the lowered cap. Spending from the trust fund in 1995 and thus far in 1996 has

remained under the caps, and CBO does not anticipate that the caps will be breached in the remainder of 1996.

The subset of programs actually funded by the VCRTF in any year is determined by the appropriation process, because the Crime Act stipulates that all transfers out of the VCRTF must be provided for in annual appropriation acts. The bulk of the spending from the VCRTF is under the jurisdiction of the House and Senate Commerce, Justice, State, and Judiciary appropriations subcommittees, with smaller amounts authorized to be funded in the appropriations acts for Labor, Health and Human Services, and Education; Treasury, Postal Service, and General Government; Veterans Affairs, Housing and Urban Development, and Independent Agencies; Interior; and Transportation.

Only a small fraction of the Crime Act's programs were authorized to receive funding in 1995; the remainder of the programs in the bill were authorized to begin in 1996. In fiscal year 1995, \$18.755 billion was appropriated for function 750; of that total, \$2.378 billion was provided from the VCRTF by three appropriations subcommittees with jurisdiction over Crime Act programs (see Table 4). An overwhelming \$2.055 billion of the Crime Act funds went to criminal justice assistance (subfunction 754), while the remaining \$323 million went to law enforcement (subfunction 751) and litigative and judicial activities (subfunction 752).

TABLE 4. CRIME ACT FUNDING TO DATE, BY BUDGET SUBFUNCTION
(By fiscal year, in millions of dollars)

	1995		1996			1997	
	Authorized	Enacted	Authorized	Requested	Enacted	Authorized	Requested
Subfunction 751: Federal Law Enforcement Activities							
General Administration of Justice	0	17.4	40.0	48.7	47.8	40.0	52.8
Federal Bureau of Investigation	0	0	41.0	46.5	218.0	48.0	133.0
Treasury Law Enforcement	39.0	38.7	77.2	78.2	76.5	97.2	97.2
Drug Enforcement Administration	0	0	12.0	12.0	60.0	20.0	138.0
Immigration and Naturalization Service	<u>347.0</u>	<u>255.2</u>	<u>332.0</u>	<u>335.5</u>	<u>316.2</u>	<u>350.0</u>	<u>458.2</u>
Subtotal	386.0	311.3	502.2	520.9	718.5	555.2	879.2
Subfunction 752: Federal Litigative and Judicial Activities							
U.S. Attorneys	0	6.8	5.0	14.7	30.0	8.0	44.4
U.S. Marshals	0	0	0	16.5	25.0	0	25.5
General Legal Activities	0	4.6	0	7.6	7.6	0	7.8
Judiciary	<u>0</u>	<u>0</u>	<u>30.0</u>	<u>30.7</u>	<u>30.0</u>	<u>35.0</u>	<u>35.0</u>
Subtotal	0	11.4	35.0	69.5	92.6	43.0	112.6
Subfunction 753: Federal Correctional Activities							
Prisons	0	0	13.5	13.5	13.5	18.9	25.2
Subfunction 754: Criminal Justice Assistance							
Ounce of Prevention Council	1.5	1.5	14.7	14.7	0 ^a	18.0	9.0
State Justice Institute	0	0	0	0.6	0	0	0
Health and Human Services	26.0	11.0	117.0	144.4	53.0	157.0	29.0
Department of Education	11.1	0	31.1	31.0	0	36.5	0
Housing and Urban Development	0	0	270.0	3.0	0	283.5	3.0
Transportation	0	0	10.0	5.0	0	0	10.0
Interior	0	0	2.7	15.2	0	0.5	0
Community Policing Program	1,332.0	1,300.0	1,850.0	1,882.0	1,400.0	1,950.0	1,950.0
Law Enforcement Block Grant	0	0	0	0	503.0	0	0
Other State and Local Crime Control	985.0	704.5	1,436.0	1,152.7	1,102.2	2,172.0	1,608.9
Justice Assistance	<u>127.0</u>	<u>37.9</u>	<u>649.9</u>	<u>434.5</u>	<u>202.4</u>	<u>734.9</u>	<u>341.4</u>
Subtotal	2,482.6	2,054.9	4,381.4	3,683.1	3,260.6	5,352.3	3,951.3
Total	2,868.6	2,377.6	4,932.1	4,287.0	4,085.2	5,969.4	4,968.4
Memorandum:							
Transfers into VCRTF	2,423.0	2,423.0	4,287.0	4,287.0	4,287.0	5,000.0	5,000.0
Authorized or Enacted over Transfers	445.6	-45.4	645.1	0	-201.8	969.4	-31.6

SOURCE: Congressional Budget Office.

a. Funded at \$1.5 million in 1996, but not from the Violent Crime Reduction Trust Fund (VCRTF).

Most of the programs authorized in the Crime Act began receiving funds in fiscal year 1996. The 1996 appropriation request was for the entire \$4.287 billion slated to be transferred to the VCRTF in that year; the programs requested were a selected subset of the \$4.932 billion worth of programs authorized for 1996 in the Crime Act. Although many proposals in the President's budget closely matched the Crime Act, significant elements of the President's 1996 justice request were not to be funded by the VCRTF, such as the immigration initiative discussed below. For the administration of justice function overall, the President's 1996 request of \$22.041 billion meant a 13.7 percent increase in budget authority over and above a CBO baseline that already permitted discretionary programs to grow at the rate of inflation.

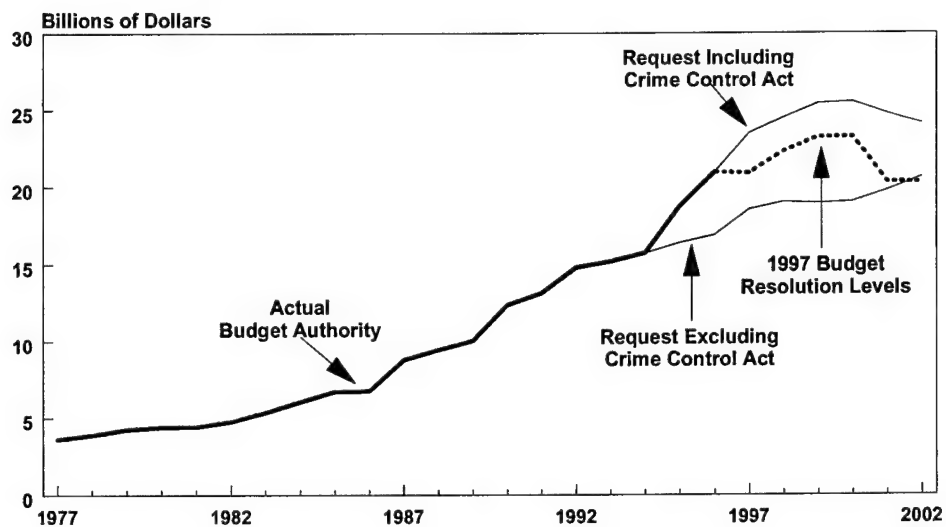
In the 1996 appropriation process, the Congress provided funding of \$20.969 billion for administration of justice, of which \$4.085 billion was spending from the VCRTF. Although Crime Act funds were roughly of the same magnitude as the President's request, final action reflected the 104th Congress's general penchant for shifting categorical grant programs to block grant programs. Both the House and Senate converted the Community Policing Initiative (or COPs program) to a law enforcement block grant totaling \$1.903 billion in 1996. Final Congressional action reflected a compromise with the Administration: a split of \$1.4 billion for the COPs program and \$503 million for the law enforcement block grant.

Despite Congressional modifications to the Crime Act programs, the effect of the act on subfunction 750 funding is still considerable. Although it is impossible to know what function 750 funding would have been in the absence of the Crime Act, it is instructive to compare 1995 and 1996 enacted levels and the President's request for 1997 through 2002 (which all include VCRTF resources) with the same measures excluding VCRTF resources (see Figure 4).

The 1997 request for function 750 is \$23.510 billion, of which \$4.968 billion is to come from the Violent Crime Reduction Trust Fund. That is virtually all of the \$5.0 billion scheduled to be transferred into the trust fund in 1997. Generally speaking, the President's request seeks to restore or initiate funding for many of the VCRTF crime prevention programs that the Congress passed over in 1996, and to preserve as much as possible of the Community Policing Initiative program and other categorical grant programs authorized in the Crime Act.

Funding levels for function 750 in the 1997 budget resolution hold spending well below the President's request; in fact, they provide for what is essentially a freeze at 1996 levels for 1997: \$20.924 billion. Congressional action on appropriations--which is currently under way--will determine the final funding mix for 1997.

FIGURE 4. EFFECT OF THE 1994 CRIME CONTROL ACT ON ADMINISTRATION OF JUSTICE FUNDING, FISCAL YEARS 1977-2002
(In billions of dollars of budget authority)



SOURCE: Congressional Budget Office.

JUSTICE SPENDING BY SUBFUNCTION

What has driven the increases in spending on justice activities over the 1962-1996 period? And what does the future hold for justice spending? An important point to keep in mind in examining those questions for each of the subfunctions is the distinction between actual spending, or outlays, which is the measure used here for programs from 1962 through 1995, and budget authority, which is the authority given to federal programs to incur obligations that will result in future spending. All discussions of 1996 and 1997 must necessarily use budget authority as a measure of program growth, because final outlays cannot yet be known.

Law Enforcement

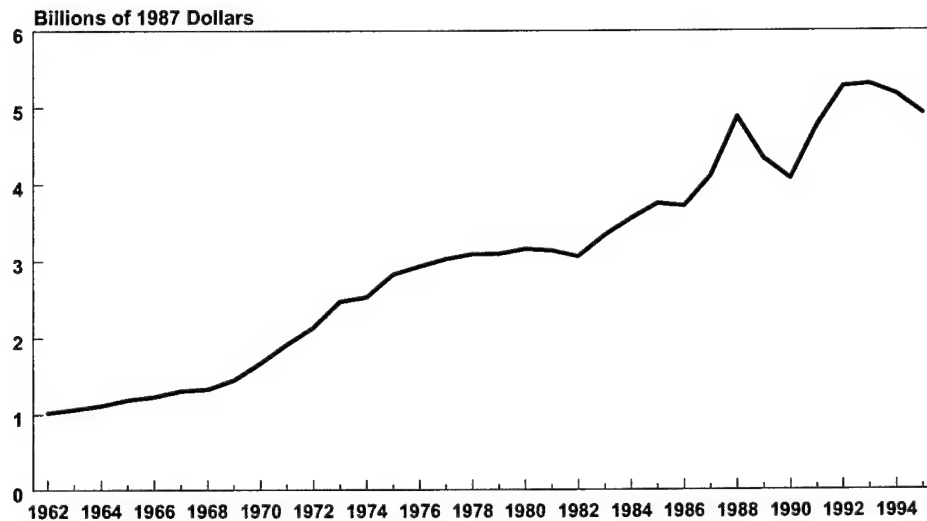
The law enforcement subfunction (751) funds the federal government's role as an enforcer of federal laws that govern a wide range of program areas. A number of programs in various agencies are included in this subfunction, but in 1995 more than 95 percent of all spending in subfunction 751 was represented by four agencies: the Federal Bureau of Investigation (FBI), the Drug Enforcement Administration (DEA), the Immigration and Naturalization Service (INS), and the Treasury Department's U.S. Customs Service (see Table 3 on page 9).

In addition to those four, the subfunction includes the Treasury Department's Bureau of Alcohol, Tobacco, and Firearms and the Secret Service; the Equal Employment Opportunity Commission; the Civil Rights Offices of the Departments of Health and Human Services and Education; and fair housing and equal opportunity funding for the Department of Housing and Urban Development.

In total, spending for the law enforcement subfunction was nearly five times greater--in real (inflation-adjusted) terms--in 1995 than it was in 1962 (see Figure 5). Of that growth, practically all can be accounted for by increases in the four largest agencies identified above.

Future growth in subfunction 751 will be primarily in those agencies as well, but caused only in part by the 1994 Crime Act. Underpinning the \$1.5 billion increase between 1995 spending and the President's 1997 request are a major Administration immigration initiative and substantial increases in funds requested for the FBI. The Antiterrorism and Effective Death Penalty Act became law in April, primarily in response to the Oklahoma City bombing a year earlier. The law authorizes an additional \$1 billion of spending from the VCRTF in the next four years (1997 to 2000), the bulk of which falls within subfunction 751. Almost half of the \$1 billion is intended to beef up the FBI's counterterrorism capabilities. The new authorizations will allow the Congress to dedicate a greater proportion of VCRTF funding to counterterrorism efforts in 1997 if it chooses to do so, but at the expense of other

FIGURE 5. SPENDING FOR SUBFUNCTION 751 (LAW ENFORCEMENT), FISCAL YEARS
1962-1995



SOURCE: Office of Management and Budget, *Budget of the United States Government*, Historical Tables.

1994 Crime Act programs: the limits on overall VCRTF spending were not raised by the Antiterrorism Act.

Federal Bureau of Investigations. The FBI is charged with investigating all violations of federal laws, including terrorism, kidnaping, extortion, bank robbery, interstate transportation of stolen property, gambling violations, civil rights matters, fraud (including health care fraud), and assault or murder of a federal officer. The FBI has concurrent jurisdiction with the DEA over federal drug violations.

Appropriations for the FBI totalled \$2.502 billion in fiscal year 1996 (of which \$218 million was VCRTF funding for digital telephony and DNA research and a variety of other technological improvements). That funding level represented more than double the amount of FBI spending as recently as 1986. During that same period, staffing rose from 21,000 full-time-equivalent positions to the current force of 26,500. Those employees are distributed among 56 field offices, about 400 resident offices, and 23 overseas offices.

The 1997 request of \$2.837 billion allows for roughly 1,400 additional employees, continues the VCRTF-funded activities, and includes \$100 million in new funding for payments to telecommunications carriers according to the Communications Assistance for Law Enforcement Act of 1994.

Customs Service. As an agency of the Treasury Department, the Customs Service protects U.S. revenue and prevents contraband from entering or leaving the United States. In recent years, that role has included working to curb the flow of narcotics across U.S. borders. The budget for the Customs Service almost doubled between 1970 and 1978--and doubled again between 1986 and 1995, driven primarily by that drug control effort. In 1962, the agency had approximately 8,400 employees; by 1995, staffing had grown to 19,600. Much of the increase was associated with renewed efforts in both the Reagan and Bush Administrations to focus on drug interdiction. The Customs Service continues to operate extensive air and sea interdiction operations.

The \$1.456 billion appropriated in 1996 (excluding offsetting user fees) maintains current staffing levels. The increase in the 1997 request to \$1.555 billion includes funding for additional Customs Service personnel to strengthen land ports of entry and help in stemming the flow of illegal aliens--as well as drugs. VCRTF funding of \$26 million was provided in 1996; \$35 million is requested in 1997.

Immigration and Naturalization Service. The INS is responsible for the admission, control, and removal of aliens within the United States. Growth in the INS is tied to the passage of laws providing for additional controls on the flow of immigrants into the United States. In 1962, the INS budget was just over \$63 million; by 1995, it had

grown to \$1.806 billion. In real terms, INS spending in 1995 was triple what it was in 1962.

The INS salaries and expenses account has grown steadily from 1962 through 1995. Moreover, the 1986 Immigration Reform Act permitted the INS to levy inspection, border, and other fees and to use the proceeds of these fees to finance INS activities. Those proceeds lower the amount of INS appropriations needed (they are similar to Customs Service fees), but for this analysis CBO included both appropriated and fee-funded activities in the INS total to show overall program growth. The best measure of INS growth, however, is the increase in the number of agency personnel. In 1962, INS staffing was 6,900; by 1995, it had grown to 28,600.

The Clinton Administration's 1996 immigration initiative involved a \$400 million increase in INS funding over 1995. The budget proposed major increases for immigration enforcement in three areas: border control and management, interior enforcement, and removal of deportable aliens. Most of the additional funds were intended for hiring approximately 1,700 new agents and other personnel. (Additional aid to the states to help them cover the costs of illegal immigrants, which was part of this initiative, is classified in subfunction 754.)

The Congress endorsed the immigration initiative, funding INS programs at \$2.554 billion. An additional 4,200 personnel were authorized: 1,400 for detention

and deportation, 380 for worksite enforcement, 1,420 for border control, and 1,000 for the Border Patrol. Besides funding the Border Patrol at well over its request, the Congress created a separate budget account for the patrol to emphasize its importance. Construction funds amounting to \$25 million were made available to increase detention capacity and improve border infrastructure. Overall, \$316 million is to come from the VCRTF in 1996, specifically for improving automated data processing, especially in the area of border control.

The 1997 request is for \$3.067 billion, most of which is intended to strengthen border security. The 1997 increases augment staffing: an additional 700 Border Patrol agents, 150 INS inspectors, and 110 support staff.

Drug Enforcement Administration. As with the Customs Service, the DEA's budget increases have been closely tied to antidrug initiatives. The agency's mission is long-term immobilization of drug trafficking organizations. In fact, spending trends seem to be explained primarily by the emphasis placed by individual Presidents on controlling the supply of drugs. In 1973, the Nixon Administration created the DEA as the lead agency to combat drug trafficking. It combined the activities of several previously existing entities, mainly from within the Justice Department.

In 1962, the entities that eventually made up the DEA spent a total of only \$4 million. In 1978, the DEA spent almost \$178 million. Spending for the agency

remained relatively constant (in real terms) until the Reagan Administration, when a renewed emphasis on controlling illegal drugs increased appropriations steadily to a 1995 level of \$788 million. Over its history, DEA staffing has risen from 421 employees in 1962 to roughly 7,500 in 1995.

The President's 1996 request for DEA involved a relatively modest increase over 1995 levels. The Congress voted \$853 million in budget authority, of which \$60 million was to come from the VCRTF for hiring new DEA agents. The President's 1997 request is for \$1.009 billion, with \$138 million to be derived from the VCRTF.

Litigative and Judicial Activities

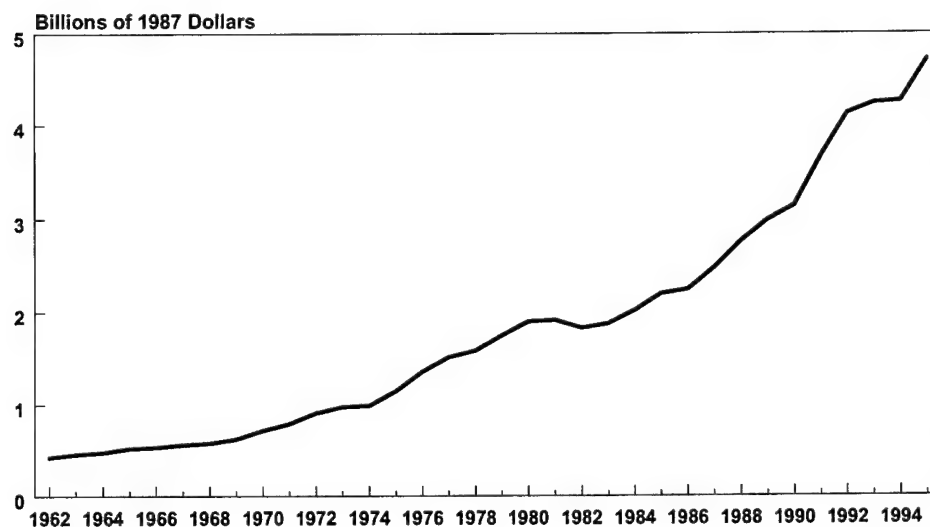
Subfunction 752--litigative and judicial activities--funds the costs of the judiciary, the costs of prosecution, and the costs to the federal government of legal defense activities. Included in the subfunction are expenses of the Supreme Court, the District Courts and Courts of Appeals for the Federal Circuit, the Court of International Trade, the Administrative Office of the U.S. Courts, the Federal Judicial Center, the Sentencing Commission, the Department of Justice's general legal activities and Antitrust Division, the U.S. Attorneys, the Marshals Service, the Legal Services Corporation, the U.S. Tax Court, and the State Justice Institute.

In 1962, those activities cost \$111 million; by 1995, they had risen to more than \$6 billion. Budget authority for 1996 totals \$6.035 billion, and the 1997 request for subfunction 752 represents an \$860 million increase over that. The subfunction includes three relatively small VCRTF-funded add-ons, primarily for personnel increases--for the federal judiciary, the Marshals Service, and the U.S. Attorneys' Offices.

Spending in this subfunction is driven by two general considerations: the salaries and expenses associated with the federal judiciary, and the scope of legal activities pursued by the Department of Justice. Each of those two areas has increased substantially in real terms since 1962. The judiciary's budget is eight times greater in real terms in 1995 than it was in 1962, and the Justice Department's legal activities have risen by a like amount over the same 33-year period (see Figure 6).

Growth in spending for the judiciary has been driven largely by court caseloads. Those, in turn, are driven by changes in law, executive branch litigation strategies, and social and cultural trends. According to the Administrative Office of the U.S. Courts, the civil caseload handled by federal courts has skyrocketed over the past 30 years, from about 59,000 cases in 1960 to 236,000 in 1994. The criminal caseload has increased at a much slower rate (from 28,000 a year to 45,000 over the same period). Several specific factors have caused these caseload increases.

FIGURE 6. SPENDING FOR SUBFUNCTION 752 (LITIGATIVE AND JUDICIAL ACTIVITIES), FISCAL YEARS 1962-1995



SOURCE: Office of Management and Budget, *Budget of the United States Government*, Historical Tables.

Over the past quarter century, more than 200 pieces of new or amended legislation have been enacted that have affected the federal judiciary. Several of them have substantially influenced civil caseloads, including the Civil Rights Acts of 1960, 1964, and 1991; the Equal Employment Opportunity Act of 1972; and miscellaneous new laws affecting environmental or workplace conditions. Legislation has also been enacted that has increased criminal caseloads. The Criminal Justice Act of 1964 gave the judiciary the responsibility for representing any person with insufficient financial resources to procure adequate representation.

In addition, the number of filings under both gun control and drug abuse prevention laws increased substantially after the passage of the Omnibus Crime Control and Safe Streets Act of 1968, the Gun Control Act of 1968, and the Comprehensive Drug Abuse Prevention and Control Act of 1970.

Perhaps of most significance in recent years, the Sentencing Reform Act of 1984 expanded the requirement for presentence investigations and allowed for appeals of both convictions and sentences. The act increased the workload for probation officers, public defenders, and other attorneys at the presentence stage and substantially increased the number of appeals.

In addition to the above legislative changes, various changes in cultural and social conditions have affected the judiciary. For example, bankruptcy filings have

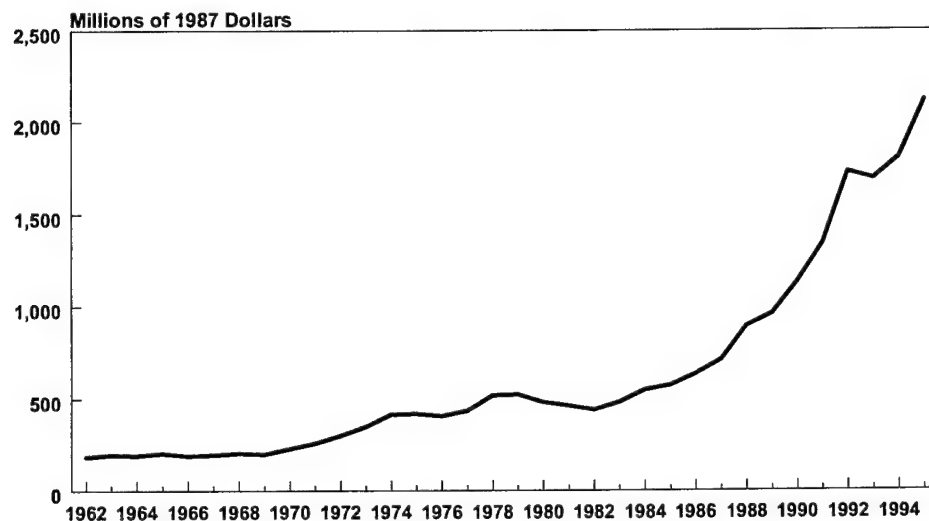
increased substantially. Filings were below 200,000 in 1973, but rose to an all-time high of 1 million by 1992, possibly in part because of large increases in consumer debt and fewer negative perceptions of bankruptcy. Also, probationers are now more likely to be substance abusers and therefore to receive treatment as a part of probation and pretrial programs. Finally, scientific advances have increased the identification of certain products as harmful, leading to additional lawsuits under product liability laws.

Federal Correctional Activities

Subfunction 753--federal correctional activities--covers the costs of incarceration, supervision, parole, and rehabilitation of federal offenders. It also includes funding for the placement of federal prisoners in state-operated facilities on a contract basis and funding for the research capabilities of the National Institute of Corrections. Spending for subfunction 753 exploded between 1986 and 1995; fiscal year 1995 spending for corrections was triple that of 1986 (see Figure 7). That surge happened after steady but relatively modest growth between 1962 and 1986.

Such budget increases have been driven by dramatic growth in the federal prison population. In 1962, federal prisoners numbered about 25,000 (spread among 30 institutions), and an additional 3,000 were housed in state and local facilities on a

FIGURE 7. SPENDING FOR SUBFUNCTION 753 (CORRECTIONS), FISCAL YEARS
1962-1995



SOURCE: Office of Management and Budget, *Budget of the United States Government*, Historical Tables.

contract basis. By the end of 1993, there were nearly 90,000 federal prisoners, 48,000 more than in 1983 and 8,700 more than at the end of 1992.² Such unexpectedly high increases over the past decade have forced the federal system to operate beyond its rated capacity. Consequently, outlays have increased to cover the costs of constructing and operating additional correctional facilities needed to alleviate prison overcrowding.

Several factors have contributed to growth in the federal prison population and the subsequent problem of overcrowding. Crime control laws such as the Sentencing Reform Act of 1984, the Comprehensive Crime Control Act of 1984, and the Anti-Drug Abuse Act of 1986 have affected prison populations tremendously.

In addition to lengthening prison sentences and setting mandatory minimum sentences, the Sentencing Reform Act of 1984 made it much more difficult for prisoners to be paroled. In the same year, the Comprehensive Crime Control Act ordered the United States Sentencing Commission to adopt guidelines that would ensure that certain repeat offenders received sentences "at or near the maximum term authorized." Two years later, the Anti-Drug Abuse Act significantly increased maximum prison terms for virtually all drug offenses. Together, these acts have kept

2. Department of Justice, Bureau of Justice Statistics, "Record Number of Prisoners Reached Again Last Year" (press release, June 1, 1994), and *Prisoners in 1993* (bulletin, June 1994).

offenders incarcerated for longer periods of time, pushing federal prison populations to, and in many cases well beyond, their limits.

Furthermore, the Sentencing Commission adopted new sentencing guidelines in 1987 that some people cite as an explanation for the growth in federal prison populations. The guidelines increased punishment and imprisonment terms for violent offenders and recidivists, firearms offenders, armed robbers, extortionists, and armed career criminals. Finally, more effective law enforcement has also played a role in the escalation of the federal prison population. Greater numbers of arrests for all crimes have subsequently increased the number of sentenced prisoners.

The President's request of \$3.209 billion for subfunction 753 for 1997 reflects the continuing growth of the federal prison population. The request assumes a population increase to 97,106 offenders, housed in 99 federal institutions. Also included in this subfunction is the cost of housing an additional 11,062 offenders in state and local facilities on a contract basis. The construction request assumes that five new prisons will open and two current facilities will be expanded.

The Crime Act provides funding only for an expansion of existing drug treatment programs in federal facilities, for which \$14 million was provided in 1996 and \$25 million is requested in 1997. All the rest of the VCRTF prison funding,

which is intended for state prisons, is categorized as criminal justice assistance and is part of subfunction 754.

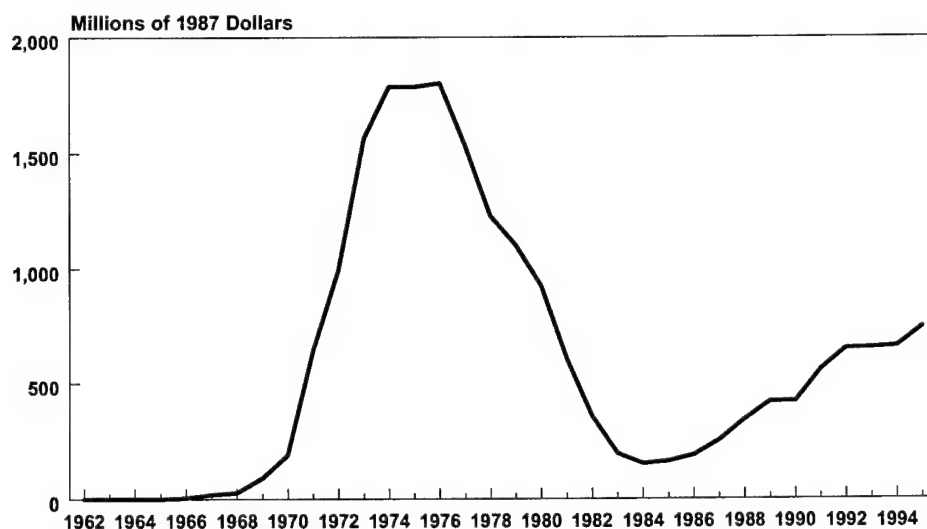
The full effect on the federal prison population of the provisions of the 1994 Crime Control Act is still uncertain. Provisions in the bill dictating longer minimum sentences, defining new federal crimes, and imposing the "three strikes and you're out" law may all increase federal prison populations.

Criminal Justice Assistance

Subfunction 754--criminal justice assistance--covers grants to state and local governments to help them improve and operate their criminal justice systems. The bulk of this aid is channeled through the Justice Department's Office of Justice programs, established by the Justice Assistance Act of 1984 to coordinate state and local assistance.

Since its creation as a separate subfunction in 1966, criminal justice assistance has experienced two major cycles. Through the end of the 1960s it grew slowly but steadily, followed by a period of explosive growth in the early 1970s (see Figure 8). That was followed by a contractionary period in the later 1970s and then another period of growth in the early 1990s. This growth is expected to continue and even

FIGURE 8. SPENDING FOR SUBFUNCTION 754 (JUSTICE ASSISTANCE), FISCAL YEARS 1962-1995



SOURCE: Office of Management and Budget, *Budget of the United States Government*, Historical Tables.

accelerate through the remainder of the century, particularly if the 1994 Crime Act is funded at or near authorized levels.

The cycle of growth and contraction is attributable to three federal initiatives designed to channel funds to state and local governments. They are the War on Crime, instituted by President Nixon in the 1970s; the War on Drugs, initiated by President Bush in the late 1980s and continued by the Clinton Administration; and President Clinton's Community Policing Initiative, begun in 1995 as a result of the 1994 Crime Act.

The federal crime war of the 1970s, like the later antidrug campaign, was established in response to public demand for federal action. The Omnibus Crime Control and Safe Streets Act of 1968 established the Law Enforcement Assistance Administration. The LEAA's major task was to curb violent street crime by enabling state and local authorities to hire more police officers and prosecutors and to incarcerate more offenders. Funding was intended not only to underwrite state and local criminal justice expenditures, but also to provide seed money for new and innovative programs. Justice assistance grew from \$65 million in 1970 to \$729 million by 1978--six times the 1970 level in real terms (see Table 3 and Figure 8).

By the late 1970s, enthusiasm for federal assistance for state and local crime control had waned. The LEAA assistance lacked specific missions and strong

constituencies in the states and localities and proved to be chronically vulnerable to cost-cutting pressures by the federal government. Three successive Administrations --Ford's, Carter's, and Reagan's--presided over the effective disappearance of federal aid for local crime control. By 1986, funding for justice assistance had become only one-fourth of what it had been eight years earlier.

The low levels of funding for law enforcement assistance continued until 1989, when President Bush announced the War on Drugs in response to widespread concerns about drug abuse and related crime. The bulk of the resulting state and local antidrug funding was funneled through the Edward Byrne Memorial Grants, otherwise known as the Anti-Drug Abuse Grants. Those grants continue to provide state and local governments with financial and technical assistance for controlling drug abuse and violent crime and improving the criminal justice system. Almost entirely as a result of the War on Drugs, subfunction 754 spending more than quadrupled between 1986 and 1995 in nominal dollars, doubling in real terms.

The upward trend continues with subfunction 754 receiving massive amounts of state and local anticrime funds as a result of the 1994 Crime Act. Budget authority for the category almost quintupled in two years, increasing from \$859 million in 1994 to \$4.157 billion in 1996. Of the total 1996 appropriations, \$3.261 billion was for VCRTF programs.

Non-VCRTF Programs. The Office of Justice Programs (OJP) in the Justice Department administers a wide range of programs in law enforcement assistance, juvenile justice, research, and statistics. Some OJP initiatives are categorized as justice assistance: assistance to the states in the form of research, evaluation, statistics, information sharing, and emergency assistance. Included are funding for programs such as the National Institute of Justice and the Bureau of Justice Statistics.

Other OJP activities are categorized as state and local law enforcement assistance, such as the Edward Byrne Anti-Drug Abuse grants for law enforcement assistance (both \$60 million in discretionary and \$328 million in formula grants) and the "Weed and Seed" fund, which assists communities with crime and drug prevention programs. Finally, juvenile justice programs (\$148 million in 1996) and public safety officers' benefits (\$31 million in 1996) are included in subfunction 754.

VCRTF Programs. The largest single component of subfunction 754 is the Crime Act's Community Policing Initiative--the frequently mentioned program adding 100,000 police to state and local law enforcement agencies, which was funded at \$1.3 billion in 1995 and requested to increase to \$1.9 billion in 1996. These VCRTF funds allow state and local governments to hire new law enforcement officers (or to rehire laid-off officers) and to train them in community policing. The Crime Act authorized this program to level off and decline slightly through 1999, then drop

sharply in 2000 as state and local governments take over increasing proportions of the costs of the additional officers.

The Congress preserved the program but cut it to \$1.4 billion for 1996. (Included was \$10 million earmarked for the Police Corps grant program, which is intended to attract young people to law enforcement careers.) The rest of the request was fashioned into a \$503 million block grant for law enforcement--a departure from the Crime Act, but more closely reflecting the priorities of the 104th Congress. The new Local Law Enforcement Block Grant is intended to support the following activities at the discretion of state and local agencies: hiring, training, and employing additional law enforcement officers; paying overtime to currently employed officers; purchasing law-enforcement-related equipment and technology; and establishing crime prevention programs. Despite the "block grant" nomenclature, however, the Congress earmarked \$18 million of the funds for funding drug courts, \$11 million for Boys and Girls Clubs, and \$15 million for programs for the Washington, D.C., police.

The Congress has funded three justice assistance programs from the VCRTF: various categorical grants to the states to combat violence against women in 1995 and 1996, grants for residential substance abuse treatment for state prisoners, and a small program for locating missing Alzheimer's patients in 1996. The 1997 request slightly increases funding levels for those programs and continues to include

assistance for delinquent and at-risk youth, a program that the Congress did not fund in 1996.

Other state and local law enforcement assistance funded in 1996 from the VCRTF included state prison grants for incarcerating violent offenders, truth-in-sentencing incentives, funding to support "Brady bill" handgun laws, grants to states for the costs of imprisoning undocumented criminal aliens, and youthful-offender incarceration grants. Additional Byrne grants (\$147 million distributed on a formula basis) were authorized in the Crime Act and funded in 1996.

The Crime Act provided for additional programs to be funded out of the VCRTF (and included in subfunction 754), although they are operated by various federal agencies outside the Justice Department. In 1995, the Department of Health and Human Services' Administration for Children and Families administered a Community Schools program and domestic violence hotline. The Congress added shelters for battered women and a runaway youth prevention program in 1996, although the Community Schools program was dropped. Public Health Service programs, notably a rape prevention and education program, were funded from the VCRTF in 1996. Appropriations for several small programs authorized in 1996 in the crime bill (operated by the Departments of Housing and Urban Development, Transportation, and Interior) were not enacted.

THE EFFECTS OF A CRIME TRUST FUND

As detailed above, the 1994 Crime Act represented a true watershed, affecting both the funding and programmatic history of the administration of justice function. Although the 104th Congress will place its own imprint on carrying out the legislation, the magnitude and significance of the act remain undiminished. A comprehensive analysis of the Crime Act is beyond the scope of this memorandum. One element, however, that seems appropriate for the Congressional Budget Office to address is the VCRTF. Specifically, what does experience tell us about the advantages and disadvantages of this funding mechanism?

The net effect of the VCRTF is to set aside portions of discretionary spending to be dedicated to crime prevention and law enforcement. Supporters of the trust fund argue that there is no more important role for government than the enforcement of law and maintenance of order. They believe that the spending authorized in the Crime Act is so important that it justifies placing these programs in a position of advantage by not forcing them to compete with other discretionary spending. Further, they point out that the creation of the VCRTF does not automatically mean more spending because funds transferred into the VCRTF do not necessarily have to be spent. Also, in some cases, VCRTF funding could eventually substitute for some of the anticrime spending that would have occurred even in the absence of the Crime Act.

The presumption underlying this set-aside is that crime prevention and law enforcement are of such paramount importance, compared with other pressing national priorities, that they deserve the special status that the VCRTF affords them. Moreover, the set-aside presupposes that crime prevention and law enforcement will continue to seem just as important during the next five years. Critics contend that maintaining the trust fund may lead to a balkanization of the federal budget, as other constituencies move to protect pots of discretionary funds in the face of ever-shrinking discretionary resources.

Critics also argue that creating the VCRTF is not unlike reinstituting the spending subcategories created under the Budget Enforcement Act. Those spending categories were in effect during fiscal years 1991, 1992, and 1993 and constrained defense, international, and domestic spending beneath an overall cap on discretionary spending. Although most policymakers agree that a cap on discretionary spending was (and remains) effective, the subcategory limits were faulted because they constrained the ability of the appropriators to look afresh at discretionary spending each year and respond to changes in priorities. Drawing on this experience, critics of the VCRTF urge the Congress to foster the greatest amount of flexibility possible in making discretionary appropriations. Abolishing the trust fund would in no way keep the Congress from appropriating whatever it believes is appropriate for anticrime programs in the future. It would merely make the environment more competitive.

Several nonpolicy issues deserve mention. Despite some criticism of the terminology, the Congress was within its rights to call the VCRTF a trust fund. A "trust fund" can be any account or accounting device so designated by law. Usually, however, a trust fund is set up as a mechanism for setting aside funds collected by the federal government for a specific purpose. Well-known examples of trust funds include the Social Security trust funds (wherein payroll taxes are collected from workers to pay for retirement, disability, and hospital benefits) and the Highway Trust Fund (wherein revenues from taxes on gasoline are set aside and used to pay for highway construction and maintenance). Critics of the VCRTF contend that the source of its funding--savings from reductions in the overall federal workforce--has no logical (not to mention programmatic) relationship to law enforcement and crime prevention, and thus it is misleading to link the two in a "trust fund" relationship.

Critics also express dismay with the idea of writing into law annual VCRTF transfer amounts for six years into the future. Even if the savings projections on which the transfer amounts are based were later discovered to be flawed, the transfers in law would happen anyway. Critics contend that it should always be possible to periodically adjust upward or downward the amount of budgetary resources to be spent from a trust fund, depending on future events.

As the VCRTF has been implemented to date, the accounting and control issues are formidable. Each year, the amounts specified in law (the aforementioned \$30.2

billion in transfers over a six-year period) are transferred from the general fund of the Treasury into the VCRTF, which is essentially a holding basin. As they are appropriated for specific programs authorized in the Crime Act, funds are transferred from the VCRTF to newly created Violent Crime Reduction Treasury Program Accounts, which, in most cases, duplicate existing Treasury accounts. (The duplicative accounts are needed to keep track of the trust fund limits.) As funds are obligated and spent on VCRTF programs, the outlays do not flow from the trust fund but from the myriad new program accounts. To further complicate VCRTF accounting, unappropriated authorizations (and any rescinded appropriations) must be tracked by program in subsequent years.

The Crime Act's provision of transfer authority adds yet another dimension to the accounting issues involved. The act sets up three broad categories of crime prevention programs and provides for the transfer in any year of up to 10 percent of the authorized level for a program in one category to another program in the same category.

CONCLUSION

The administration of justice is a growth industry and has been for the last 35 years. Spending in this area--by all levels of government--can be seen as a government

response to the public's heightened concerns about violent crime and personal safety. The 1994 Violent Crime Control and Law Enforcement Act represents not a major change from recent trends, but a continuation of a pattern that has seen federal justice spending grow more than sixfold in real terms since 1962 and almost double since 1986. Further, that pattern is consistent with trends in state and local spending on criminal justice, which has more than doubled in real terms since 1970.